

Exhibit A

PATRICK MAIO - 08/22/2018

1

2 IN THE UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 GARY KOOPMAN, TIMOTHY KIDD and
6 VICTOR PIRNIK, Individually and on
7 Behalf of All Others Similarly
8 Situated,

9 Plaintiffs,

10 Case No. 15-cv-7199 (JMF)
11 v.

12 FIAT CHRYSLER AUTOMOBILES N.V.,
13 SERGIO MARCHIONNE, RICHARD K.
14 PALMER, and SCOTT KUNSELMAN

15 Defendants.

16 -----x

17 10:10 a.m.

18 August 22, 2018

19 125 Broad Street
20 New York, New York

21 VIDEOTAPED DEPOSITION of PATRICK MAIO, a
22 Witness in the above entitled matter, pursuant to
23 Order, before Stephen J. Moore, a Registered
24 Professional Reporter, Certified Realtime Reporter
25 and Notary Public of the State of New York.

1 PATRICK MAIO

2

3 A P P E A R A N C E S:

4 THE ROSEN LAW FIRM, P.A.

5 Attorneys for Plaintiffs and Class

6 275 Madison Avenue, 34th Floor

7 New York, New York 10016-2498

8

9 BY: SARA FUKS, ESQ.

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11

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22 New York, New York 10004-2498

23

24 BY: TASHA N. THOMPSON, ESQ.

- and -

25 MICHAEL T. TOMAINO, JR., ESQ.

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9	1	Phone bill of Patrick Maio from	14	8
10		January and February of 2017		
11		(redacted)		

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1 PATRICK MAIO

2 THE VIDEOGRAPHER: We are now
3 going on the record. This is media 1 of
4 the video deposition of Patrick Maio.

5 Today is Wednesday, August 22,
6 2018, and the time is approximately 10:07.
7 This is the case entitled Gary Koopman,
8 Timothy Kidd and Victor Pirnick versus
9 Fiat Chrysler Automobiles, filed in the
10 State of New York, case number 15 CV
11 07199-JMF.

12 The deposition is being held at 125
13 Broad Street, New York, New York.

14 My name is Rocky Mercurio, the
15 videographer, and the certified court
16 reporter is Stephen Moore.

17 Will counsel please introduce
18 yourselves and whom you represent for the
19 record.

20 MS. THOMPSON: Tasha Thompson
21 from Sullivan & Cromwell on behalf of
22 Defendants, and Michael Tomaino from
23 Sullivan & Cromwell for Defendants.

24 MS. FUKS: Sara Fuks from The
25 Rosen Law Firm on behalf of Plaintiffs

1 PATRICK MAIO

2 and the class.

3 MS. MONTENEGRO: Veronica
4 Montenegro from Pomerantz on behalf of
5 the Plaintiffs and the class.

6 THE VIDEOGRAPHER: The court
7 reporter will now swear in the witness
8 and then we can proceed.

9
10 P A T R I C K M A I O, called as a witness,
11 having been first duly sworn by the Notary
12 Public, was examined and testified as
13 follows:

14
15 EXAMINATION BY

16 MS. THOMPSON:

17

18 Q Good morning.

19 A Good morning.

20 Q My name is Tasha Thompson, and
21 I'll be asking you a few questions today.

22 Before we get started, could you
23 just state your name and home address for the
24 record?

25 A Yes, my name is Patrick Maio,

1 PATRICK MAIO

2 M-a-i-o, and my home address is [REDACTED]

3 [REDACTED].

4 Q Have you ever been deposed,
5 Mr. Maio?

6 A No.

7 Q So the way it works today is
8 that I will just ask you some questions, and
9 you do have to answer the questions, unless
10 your counsel instructs you specifically not to
11 answer them.

12 Do you understand that?

13 A Yes.

14 Q If you don't understand a
15 question, please ask me for clarification.

16 If you don't ask, I will assume
17 that you understood. Does that make sense?

18 A Yes.

19 Q Is there any reason that you
20 can't testify truthfully today?

21 A No.

22 Q Do you know why we are here
23 today?

24 A We are here today so you can ask
25 me questions because of, I guess there is a

1 PATRICK MAIO

2 discrepancy in the testimonies and what I have
3 provided as far as information to the other law
4 firms.

5 Q How did you first learn of this
6 deposition?

7 A How did I first learn?

8 Q That you were going to have to
9 be deposed today?

10 A I was notified what, August,
11 early August that I would have to be coming
12 here to New York to basically be deposed.

13 Q Who told you?

14 A My boss, initially.

15 Q Did you do anything to prepare
16 for the deposition?

17 A Spoke with lawyers, with Rosen
18 and Pomerantz, and reviewed documents.

19 Q What documents did you review?

20 A Well, my notes, some information
21 that I provided to my boss regarding the
22 interview, that was put in a prepared format.

23 And that was it.

24 Q Who prepared the format?

25 A Me.

1 PATRICK MAIO

2 Q Did any of the notes or the
3 documents that you reviewed remind you of any
4 details of your investigation that you had
5 forgotten?

6 A Remind me, yeah. I mean, it's
7 been almost a year and a half, so, yes.

8 Q Which documents reminded you of
9 those?

10 A All of it; nothing in
11 particular.

12 Q Did you do anything else to
13 prepare for today?

14 A For today, I spoke with my boss
15 at On Point, and also I spoke with the
16 attorneys representing the Plaintiffs in this
17 case.

18 Q Who is your boss at On Point?

19 A You are going to make me
20 pronounce his last name, Chris Szechinski.

21 Q Could you please spell that?

22 A Oh, God.

23 Q If you can.

24 A It's not going to be correct,
25 but I'll give it a good shot,

1 PATRICK MAIO

2 S-z-e-c-h-i-n-s-k-i, something of that sort.

3 I mean, it's a pretty consonant
4 riddled name.

5 Q Fair enough.

6 So, you mentioned that you work
7 for On Point?

8 A Yes.

9 Q When did you start?

10 A I had two stints. The first
11 time would have been in late '14 for about a
12 month, month and a half as an independent
13 contractor.

14 And that would have been in,
15 don't hold me to the dates exactly, but
16 September, October of 2014.

17 And then I moved right -- I'm a
18 newspaper reporter by trade, so I took a job
19 with San Diego Union Tribune, and the last time
20 I joined Chris would have been beginning in
21 October of 2016.

22 Q Has your position at On Point
23 changed since you joined in October of 2016?

24 A I am not doing -- currently I'm
25 not doing research any longer for -- in cases

1 PATRICK MAIO

2 that he's working on.

3 Q When did that change?

4 A When I started teaching at the
5 University of Southern California, writing.

6 Q Writing is what you teach?

7 A Yes.

8 Q One of your assignments for On
9 Point was an investigation in connection with
10 this case, right?

11 A Yes.

12 Q When did you receive that
13 assignment?

14 A I can't remember specifically
15 the date, but I would surmise it was probably
16 in early February of 2017.

17 And the reason I surmise that is
18 again, it was a year and a half ago, but the
19 reason I surmise that is because my first memos
20 were written about that time.

21 So if they are dated then, then
22 that must have been when I started.

23 Q How many memos did you write in
24 connection with this assignment?

25 MS. FUKS: Objection. This goes

1 PATRICK MAIO

2 beyond the scope of the deposition as
3 ordered by the court.

4 Q Are you going to answer my
5 question?

6 MS. FUKS: I am instructing him
7 not to answer because it's beyond the
8 scope.

9 MR. TOMAINO: How about if she
10 asks how many memos did he prepare of
11 his conversation with Mr. Crabb?

12 We are entitled to that, right?

13 MS. FUKS: Yes.

14 MR. TOMAINO: Why don't you ask
15 that question, why how many memos did
16 you write in connection with your
17 interview of Mr. Crabb, or interviews?

18 A Just one.

19 Q How many times did you speak
20 with Mr. Crabb?

21 A Once.

22 Q For your assignment, was there a
23 deadline to complete the assignment?

24 A A deadline, my job is to write
25 them as quickly as possible within a short

1 PATRICK MAIO

2 amount of time after I do the interview.

3 Q Was there a deadline to complete
4 the investigation as a whole?

5 A I'm not privy to that
6 information. I mean, that's Chris' job, and I
7 just follow his orders on speaking to people.

8 Q Did Chris give you any deadline
9 for turning in any memos?

10 A "Get it done."

11 Q What was the goal of your
12 assignment?

13 A Interview people -- what is the
14 goal that Chris gave me?

15 Q Yes.

16 A Interview people and ask them
17 about their former employment, about what they
18 did, generally speaking.

19 Q So, did you exclusively
20 interview former employees?

21 A Yes. Yes.

22 Q Was that an instruction that you
23 received from Chris?

24 A I'm not permitted to speak to
25 current employees.

1 PATRICK MAIO

2 Q Who gave you that instruction?

3 A Chris.

4 Q Chris, and --

5 A And I do what he tells me to do.

6 Q Understood.

7 How did you know when you were
8 through with the assignment?

9 A I thought I was through with it
10 in February of 2017.

11 So in the back of your mind I
12 suppose there is probably a thought that it may
13 never be done, because of something like this
14 that may occur.

15 But, I turn in my memo, and he
16 turns it in to whomever he turns it in to.

17 I don't ask a lot of questions
18 about who he turns it in to, specifically,
19 again, it's not my job responsibility.

20 But yeah, I thought I was done
21 with it probably in February, early February of
22 2017.

23 And then I move on.

24 Q So, the conversation you had
25 with Mr. Crabb was in February of 2017, right?

1 PATRICK MAIO

2 A February 7 at 6:11 p.m.

3 MS. THOMPSON: I am handing the
4 court reporter a document to mark as
5 Exhibit 1.

6 A Did I get that date right?

7 (The above described document was
8 marked Maio Exhibit 1 for identification
9 as of this date.)

10 Q So, we have just marked as
11 Exhibit 1 your phone bill from January and
12 February of 2017, is that right?

13 A Let me look. It looks to be
14 that, yes.

15 Q Or at least a heavily redacted
16 version?

17 A Yes, this is my phone bill.

18 Q On the front page here it lists
19 four different phone numbers. Do you see that?

20 A Yes.

21 Q Are all of those your phone
22 numbers?

23 A They are on my family plan;
24 wife, two kids.

25 Q Which one do you use?

1 PATRICK MAIO

2 A [REDACTED].

3 Q All right. If you turn to page
4 20 using the numbers at the top of the records
5 here.

6 A Okay.

7 Q You will see the only unredacted
8 information on this page seems to indicate that
9 you had a 46 minute phone call with a Colorado
10 phone number at 6:11 p.m. on February 7 of
11 2017, is that right?

12 A Yes.

13 Q Is that Mr. Crabb's phone
14 number?

15 A Yes, that's the one I reached
16 him on, so --

17 Q Did you ask if he was in
18 Colorado at the time?

19 A That came up in the
20 conversation, yes.

21 Q What did he say?

22 A What did he say why he's in
23 Colorado?

24 Q Did he say he was in Colorado?

25 A I was no idea if he was in

1 PATRICK MAIO

2 Colorado or not when I spoke with him, but he
3 said he moved to Colorado or was in the process
4 of moving to Colorado.

5 But I have no idea when I spoke
6 to him, because again, this may have been a
7 cell phone. I don't know.

8 Q You are not sure.

9 How did you get Mr. Crabb's cell
10 phone number?

11 MS. FUKS: Objection. That goes
12 into work product and strategy.

13 MR. TOMAINO: To identify the
14 source of the information?

15 MS. FUKS: Where he gets his
16 information from and his research from
17 is part of work product.

18 MR. TOMAINO: We totally
19 disagree.

20 Just note the objections to the
21 instruction.

22 MS. THOMPSON: If you object to
23 the instruction.

24 Q Were you provided Mr. Crabb's
25 contact information by counsel?

1 PATRICK MAIO

2 MS. FUKS: I'm going to object
3 and instruct him not to answer. Where
4 he gets phone numbers from is part of
5 his work product and strategy.

6 Q Do you intend to follow that
7 instruction?

8 A Yes.

9 Q Did you get the phone number
10 from your boss?

11 MS. FUKS: Excuse me, I objected,
12 I am instructing him not to answer this
13 line of questioning as to where he got
14 the phone number from.

15 MS. THOMPSON: You are objecting
16 to whether he got it from his boss?
17 Couldn't he just say no?

18 MS. FUKS: That is a yes or no
19 question, but I'm objecting to questions
20 as to whom he got the phone number from
21 and how he got it, because that's
22 strategy, that's work product.

23 MS. THOMPSON: We disagree with
24 that characterization, but --

25 MS. FUKS: That's fine. We can

1 PATRICK MAIO

2 have that.

3 Q How did you know when you were
4 going through your phone records that this was
5 Mr. Crabb's phone number?

6 A I called him.

7 Q Let me clarify it.

8 When you were going through to
9 decide, did you decide which phone number to
10 list -- which call to leave unredacted here?

11 A No, that's the only phone call I
12 made to Mr. Crabb.

13 Q As opposed to any of the other
14 phone calls listed on this page, were you the
15 one that identified this as the phone call you
16 made to Mr. Crabb?

17 A Oh, I got you. Yes, that's
18 correct. I identified it because it matched
19 the number that I had reached him on.

20 Q Do you just remember what his
21 phone number was?

22 A Off the top of my head, no, I do
23 not.

24 Q Did you have to look it up to
25 figure out which call was his phone number?

1 PATRICK MAIO

2 A Yeah, I did.

3 Q What did you review to remind
4 you of that information?

5 A A piece of paper.

6 Q Was it your notes?

7 A Yes, there were -- it was in my
8 notes, yes.

9 Q Is that what you reviewed to
10 remind you of this information?

11 A Yes.

12 And -- yes.

13 Q Was there anything else that
14 reminded you of this information?

15 A Just a long list of phone
16 numbers, that's all.

17 Q Who prepared that list?

18 A I don't know, actually, I do not
19 know.

20 Q How did you get that list?

21 A Provided to me.

22 Q By whom?

23 MS. FUKS: Objection. This is
24 again work product strategy, how he gets
25 his phone numbers.

1 PATRICK MAIO

2 You've identified Mr. Crabb's
3 number and verified that it was his.
4 Anything beyond that --

5 MS. THOMPSON: Counsel, he relied
6 on the document to refresh his memory
7 about the phone call.

8 I think we are entitled to know
9 what the document is.

10 MS. FUKS: He's already
11 identified the document.

12 MR. TOMAINO: First, let's just
13 stop. He already testified that his
14 review of his notes in preparation for
15 this deposition helped him remember the
16 content of the conversation.

17 So, as you know, under Rule 612, we
18 get to have a copy of the notes now so we
19 can cross-examine him on the contents that
20 he used to refresh his recollection.

21 MS. FUKS: No, I don't think so.

22 MR. TOMAINO: We will create the
23 record.

24 We are requesting that we receive
25 today for purposes of this examination

1 PATRICK MAIO

2 copies of any documents that he reviewed
3 in preparation for this deposition and
4 that refreshed his recollection.

5 MS. FUKS: You are absolutely
6 not.

7 MR. TOMAINO: Excuse me, I'm in
8 the middle of a sentence.

9 MS. FUKS: Okay.

10 MR. TOMAINO: Now I'm going to
11 start over.

12 We are requesting on the record
13 that you produce to us today for use in
14 this deposition any documents that he
15 reviewed in preparation and that refreshed
16 his recollection.

17 He already testified that his notes
18 of the call fall into that category, he
19 already testified that everything he
20 reviewed in preparation for this
21 deposition refreshed his recollection.

22 So now we are going to request that
23 you produce those documents.

24 If you want to refuse, you can
25 refuse, and we will keep the deposition

1 PATRICK MAIO

2 open.

3 MS. FUKS: Okay, you can do that.

4 We are not going to be producing those
5 documents because the court has ruled
6 that his notes and his memos are work
7 product.

8 MR. TOMAINO: He's reviewed them
9 to refresh misrecollection in
10 preparation for this deposition.

11 Are you still refusing to produce
12 them?

13 MS. FUKS: Yes.

14 MR. TOMAINO: Okay, the
15 deposition is going to remain open.
16 Let's go on with the questions.

17 Q Let's talk about the
18 conversation you had with Mr. Crabb.

19 A Sure.

20 Q Did he know that you were going
21 to call him?

22 A No.

23 Q How did you introduce yourself
24 when you called?

25 A I introduced myself, I

1 PATRICK MAIO

2 identified myself properly as Pat Maio, I am a
3 researcher working with On Point
4 Investigations, which is working with the law
5 firm that's handling a litigation.

6 Q Did you ever work directly with
7 the law firm during the course of your
8 investigation?

9 A No.

10 Q Did you work exclusively with
11 your boss?

12 A I just worked with my boss.

13 Q So how did you start the
14 conversation with Mr. Crabb?

15 A Just like I outlined to you.

16 Q After the introductions, I'm
17 sorry.

18 A Well, then, my second question
19 is always are you a current employee of FCA or
20 not?

21 Q Did you create the list of
22 questions that you asked?

23 A No, I did not.

24 Q Were you provided a list of
25 questions?

1 PATRICK MAIO

2 MS. FUKS: Objection, this is
3 work product. The list of questions is
4 work product. I'm going to instruct him
5 not to answer.

6 MS. THOMPSON: Counsel, I just
7 asked if he was provided a list, not who
8 it came from or the content of that
9 list.

10 Are you still instructing him not
11 to answer?

12 MS. FUKS: Yes. By asking him
13 whether he's been provided a list you
14 are eliciting questions as to who
15 provided it to him and how it was
16 provided, and that is work product.

17 MS. THOMPSON: It's work product
18 to ask whether -- so your position is
19 that it reveals the mental processes of
20 counsel to ask whether he was provided a
21 list of questions?

22 MS. FUKS: Yes.

23 MR. TOMAINO: Even if it was from
24 someone who wasn't counsel?

25 MS. FUKS: Yes.

1 PATRICK MAIO

2 MR. TOMAINO: How does a list
3 provided by someone who is not counsel
4 reveal the mental --

5 MS. FUKS: Anybody that he works
6 with, that we work with, that counsel
7 works together with on his team is
8 subsumed in work product.

9 MR. TOMAINO: First of all,
10 that's not correct. And second of all,
11 the question that was asked was whether
12 someone gave him a list.

13 MS. FUKS: Okay, but that's
14 leading the question that -- that is I
15 mean that is -- I'm objecting.

16 MR. TOMAINO: You are instructing
17 him not to answer?

18 MS. FUKS: Yes.

19 MR. TOMAINO: This deposition is
20 going to have to go on for another day.
21 Just keep making the instruction and
22 we'll keep objecting to the instruction,
23 but that's inappropriate.

24 MS. THOMPSON: As noted, we
25 object to the instruction.

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1 PATRICK MAIO

2 Q So, what did Mr. Crabb say in
3 response to whether he was a current or former
4 employee?

5 A He was a former employee.

6 Q Did he tell you the details of
7 his departure from FCA?

8 A He said he was moving to
9 Colorado, so.

10 Q Did he tell you where -- like
11 what divisions he worked in in FCA while he was
12 there?

13 A He said that he worked at the
14 Tech Center in Auburn Hills.

15 Q Did he tell you what he did
16 there?

17 A Yes, he kind of outlined two
18 different job responsibilities.

19 Q What were those?

20 A The first one, over a period of
21 I think roughly about two years, would have
22 been that he was looking at the fuel economy of
23 FCA developing cars, cars that FCA as
24 developing over the next several years.

25 Second responsibility would have

1 PATRICK MAIO

2 been in the benchmarking department, I believe,
3 looking at non-FCA cars and seeing how -- what
4 they were doing, the competitors were doing to
5 either lower their fuel -- yes -- make the fuel
6 economy more efficient, or lower emissions.

7 And the gas -- on the gasoline
8 side.

9 Q Did he ever tell you he worked
10 with diesel vehicles in any way?

11 A No, he never did.

12 Q Were those the only two areas
13 that he talked about?

14 A Well, yeah, I mean -- yes.

15 Okay, yeah. Those are the only
16 two areas. As far as his responsibilities?

17 Q Right.

18 A Yes.

19 Q Are the only two areas he
20 described as his responsibilities?

21 A Yes, in the gas area, the
22 gasoline side.

23 Q The gasoline side, specifically
24 fuel economy of developing cars and
25 benchmarking non-FCA manufactured cars, is that

1 PATRICK MAIO

2 right?

3 A Yes.

4 Q What else did you guys talk
5 about during your conversation?

6 A We discussed his working
7 knowledge on the diesel side.

8 We discussed how reports were
9 passed up on his work; up as being up the
10 corporate ladder.

11 Q All right, we will talk about
12 those separately.

13 So, you said knowledge, his
14 knowledge of the diesel side. What do you mean
15 by diesel side?

16 A As he explained, there were two
17 benchmarking departments in FCA; one was gas
18 and one was diesel.

19 Q Did he say he had ever worked
20 with diesel benchmarking?

21 A No, never.

22 Q What did he give you as the
23 basis for his knowledge about diesel
24 benchmarking?

25 A His knowledge of engines in

1 PATRICK MAIO

2 general. I don't know beyond that, other than
3 the fact that he may have had colleagues who
4 worked in the diesel department.

5 He understood how diesel engines
6 may have been testing and those may have been
7 differently than gasoline.

8 Q Did he tell you that he had
9 knowledge because of working with colleagues?

10 A He said he had a general working
11 knowledge. That's all he said to me.

12 Q Did you explore the basis for
13 that knowledge in any more depth?

14 A I tried to; I tried to dig down
15 as deep as I could.

16 Q Did he give you any more
17 explanation?

18 A Not really, no. He just said he
19 had a general working knowledge.

20 Q What did you ask him, to dig
21 down into the depth of his diesel -- the basis
22 for his diesel knowledge?

23 A How they worked, what were some
24 of the issues, maybe perhaps with testing, as
25 they may have been different or the same as

1 PATRICK MAIO

2 gasoline.

3 I mean, that was general.

4 Q And you said that this was the
5 diesel side of benchmarking, right?

6 A As far as what? As far as what
7 his knowledge is? Yeah. I was very clear on
8 that, that what is your -- what is your
9 knowledge of how things are done on the diesel
10 side of the business.

11 So, he said he only had a
12 general working knowledge, not a specific.

13 Q Right. I suppose I'm just
14 trying to distinguish, he was talking about
15 diesel benchmarking rather than diesel fuel
16 economy, right, because you identified those
17 two as sort of his knowledge of things?

18 A Read that for me again.

19 Q Was he referring to the diesel
20 side of the fuel economy testing at all, or
21 only benchmarking?

22 A Well, we discussed how it might
23 be different -- well, what I was looking at was
24 basically fuel economy and lower emissions.

25 I did not get into anything else

1 PATRICK MAIO

2 beyond that; he didn't either.

3 Q Do you understand emissions
4 testing is to be part of fuel economy testing?

5 A In a general sense, yes.

6 Q Did you talk about what types of
7 emissions he tested as part of his fuel economy
8 testing?

9 A I can't recall specifically, I
10 really can't.

11 But I'm sure that seems to me a
12 plausible question to ask about diesel versus
13 gas emissions.

14 But again, he didn't have any
15 specificity, so --

16 Q Did you ask about whether it was
17 CO2 emissions, for example?

18 A No, we just talked about
19 emissions in general. I never specified
20 anything beyond that.

21 Q All right. You also mentioned
22 that you discussed how reports were passed up
23 the corporate ladder, right?

24 A How he did, yes.

25 Q What did Mr. Crabb tell you

1 PATRICK MAIO

2 about how reports were passed up the corporate
3 ladder?

4 A In a general way he would --
5 well, he had two different job responsibilities
6 while he worked there.

7 It sounded like, from what he
8 explained to me, from what I read was -- or he
9 conveyed to me, excuse me, from what he
10 conveyed to me, he would pass his reports on to
11 his senior manager.

12 Of course I asked who that is,
13 or was, and if he still was employed there or
14 not.

15 I got nothing out of him on
16 that. So there you have it.

17 Then ultimately he explained to
18 me that the reports would go up to Jeffrey Lux
19 and Robert E. Lee, and then from there it goes
20 all the way up to Mr. Marchionne.

21 Q Did he use the names Jeffrey Lux
22 and Robert E. Lee?

23 A Yes.

24 Q He used names instead of just
25 titles, for example?

1 PATRICK MAIO

2 A No, I'm trying to recall off the
3 top of my head again the titles. Because one
4 was a -- Lux was a power train -- transmission
5 power train title, as far as a Vice President.

6 And Robert E. Lee was an engine
7 power train and electrical propulsion and
8 systems engineering title for Vice President.

9 And as I understood it also from
10 speaking with him, though, there is a rather
11 flat organization at Chrysler, or FCA, excuse
12 me, so there is not a lot of management levels,
13 it sounded like.

14 I mean, he used -- I read his
15 declaration. I think he said there were like
16 four levels, I believe, between him and
17 Mr. Marchionne.

18 He never said that to me when I
19 was interviewing him, so I have no idea how
20 many levels there were, other than the fact
21 that ultimately it went up to these two
22 individuals, who then would pass it on up to
23 Marchionne.

24 That's all I know.

25 Q Did you specifically ask him how

1 PATRICK MAIO

2 many levels of management were above him?

3 A I did not ask that question, no.

4 Q Did you ask anything that would
5 have elicited the answer to that question?

6 A Yeah, how -- I want to know
7 everybody that's got their hands on that report
8 as it goes up the chain.

9 Q And to go back, just to clarify
10 an earlier question, did he identify Robert E.
11 Lee and Jeff Lux by their titles or by their
12 names?

13 A Their names.

14 Q Did he say that he ever
15 personally had passed reports up to Jeff Lux or
16 Robert E. Lee?

17 A No, never said that.

18 Q So what was the basis for his
19 understanding that reports were passed up?

20 A Because I probably asked him
21 that, where does that report go after you give
22 it to senior manager, whom he declined to
23 disclose the identity of, where does that
24 report go.

25 I mean, I'm like focused on

1 PATRICK MAIO

2 where that -- who is touching that report as it
3 goes up.

4 Q Why were you focused on who's
5 touching the report as it goes up?

6 A Because I want to know.

7 Q Was that part of your
8 assignment, to find out where information went
9 in the company?

10 A No, I wanted to know who is
11 reviewing what.

12 Q So what report are you talking
13 about?

14 A The report that he prepared or
15 had his signature on regarding testing at
16 the -- either as a power train engineer or
17 working in the power train -- excuse me, in the
18 benchmarking department.

19 Q In either fuel -- so there were
20 two different types of reports that you were
21 referring to?

22 A Well, he worked at two
23 different -- he had two different job
24 responsibilities there, so any reports that he
25 may have been working on, I would like to know

1 PATRICK MAIO

2 about.

3 Q What data was included in that
4 report?

5 A I have no idea.

6 Q So, he only works in gas, right,
7 that's what you said earlier?

8 A Yes.

9 Q So the reports wouldn't have
10 been about diesel that he was discussing?

11 A Oh, no, nothing to do with that.

12 Q For the court reporter's sake,
13 can we wait until after I ask the question?

14 A I apologize.

15 Q That's fine.

16 So there were no reports that
17 involved, that he was talking about, that
18 involved the diesel emissions of FCA vehicles,
19 right?

20 A No.

21 MR. TOMAINO: Would you clarify,
22 restate the question and answer, please.
23 I think there is a double negative in
24 there.

25 She said right and you said no.

1 PATRICK MAIO

2 MS. THOMPSON: Thank you.

3 MR. TOMAINO: Clarify the
4 question and answer, please.

5 Q Were there any reports that
6 involved the testing of diesel emissions of FCA
7 vehicles?

8 A Diesel, is that right?

9 No.

10 Q When was the last time you
11 communicated with Mr. Crabb?

12 A Mr. Crabb?

13 Q Yes.

14 A February 7, 2017.

15 Q And you took notes of that
16 conversation, right?

17 A Yes.

18 Q Earlier you mentioned in one of
19 your answers that you read something in
20 relation to Mr. Crabb's job responsibilities.

21 Were there any documents that
22 you had describing Mr. Crabb's job
23 responsibilities?

24 A No.

25 Q Did Mr. Crabb send you any

1 PATRICK MAIO

2 documents?

3 A No.

4 Q How did you keep your notes of
5 your conversation with Mr. Crabb?

6 A How do I keep them?

7 I keep a paper based copy,
8 because I can read better off of that than a
9 screen, and there is also an electronic
10 version.

11 Q So when you take the notes, are
12 you taking them on paper?

13 A No.

14 Q Do you type them?

15 A I type.

16 Q Did you -- did you write direct
17 quotes from Mr. Crabb in your notes?

18 A Generally, yes.

19 Q Did you write some direct quotes
20 from Mr. Crabb in your notes?

21 A Yes.

22 Q Approximately how many quotes
23 did you take down?

24 A I have no idea, I didn't count
25 them, but there are easily a handful, easily.

1 PATRICK MAIO

2 Q And you said earlier that you
3 reviewed a document that you had formatted
4 reflecting your conversations with Mr. Crabb,
5 is that right?

6 Did your notes become part of
7 that document?

8 A Well, yeah.

9 Q How else, how did you create
10 that document, or what was it?

11 A Create which document?

12 Q The document you just said you
13 formatted.

14 A The formatted document which
15 I --

16 Q Um-hum.

17 A Which I guess we can call a
18 memo, right?

19 Q That would be useful.

20 A Is that correct? Yeah, I just
21 wrote a memo.

22 Q How long was the memo?

23 A I don't know the exact number,
24 but it was a few pages.

25 Q Less than ten pages?

1 PATRICK MAIO

2 A Yes.

3 Q Did the note -- did the memo
4 contain the direct quotes?

5 A I would say yes, yes.

6 Q Did you turn your notes into
7 your boss at all?

8 A Everything went to my boss.

9 Q So does that include the notes
10 and the memo?

11 A Yes.

12 Q Are there any other
13 documentation that that included?

14 A Phone record.

15 Q Meaning the phone bill that we
16 have here?

17 A Yes.

18 Q Did you record the conversation
19 with Mr. Crabb?

20 A I don't record.

21 Q Even as a journalist you've
22 never recorded?

23 A Only politicians.

24 Q Why?

25 A Why? Because they don't tell

1 PATRICK MAIO

2 the truth.

3 Q Why not anybody else?

4 A Because this isn't that kind
5 of -- well, the reason I don't record, I didn't
6 record Mr. Crabb in this case is because I live
7 in California, and there is -- you have to be
8 very careful about recording people who live in
9 other states, that can become a potential
10 no-no.

11 And rather than me researching
12 every state law, 50 of them, potentially that I
13 might have to interview somebody, including out
14 of country, you know, that's why I don't
15 record.

16 Q When was the last time you
17 looked at your notes?

18 A Probably yesterday.

19 Q Did you review both the notes
20 and the memo in preparation for this
21 deposition?

22 MS. FUKS: Objection, asking
23 questions about the substance of the
24 documents that he prepared, this is
25 privileged.

1 PATRICK MAIO

2 MR. TOMAINO: That wasn't a
3 question about the substance of the
4 document.

5 She asked him if he reviewed both
6 the notes and the memo in preparation for
7 the deposition.

8 He's testified he reviewed the
9 notes yesterday. Now the question is did
10 you also review the memo in preparation
11 for the deposition. Nothing about the
12 substance.

13 MS. FUKS: Okay, I will allow it.

14 A Yes.

15 Q When you reviewed those
16 documents, did they remind you of details of
17 your investigation that you had previously
18 forgotten?

19 A Remember, it's been a year and a
20 half since I spoke to him, so yes.

21 MS. THOMPSON: I would like to
22 take a break if that's okay with
23 everybody.

24 MS. FUKS: Sure.

25 THE VIDEOGRAPHER: We are now

1 PATRICK MAIO

2 going off the record. The time is
3 10:44.

4 (At this point in the proceedings
5 there was a recess, after which the
6 deposition continued as follows:)

7 MS. THOMPSON: Can we mark this
8 as Exhibit 2.

9 (The above described document was
10 marked Maio Exhibit 2 for identification
11 as of this date.)

12 THE VIDEOGRAPHER: We are now
13 going back on the record. The time is
14 11:06.

15
16 CONTINUED EXAMINATION BY

17 MS. THOMPSON:

18
19 Q Welcome back.

20 A Thank you.

21 Q So, I have asked the court
22 reporter to mark a second exhibit that we will
23 go ahead and start talking about.

24 So, the court reporter has
25 marked as Exhibit 2 the declaration of Alex

1 PATRICK MAIO

2 Crabb.

3 Do you recognize this document?

4 A These are my reading glasses.

5 Yes.

6 Q When did you first see this
7 document?

8 A It would have been, this is
9 August 22nd, so it would have been earlier this
10 month.

11 Q How did you receive the
12 document?

13 A I believe -- I'm not sure, but
14 it would have either have been through Chris,
15 my boss, or one of the lawyers at Pomerantz,
16 perhaps, but I'm not 100 percent sure who sent
17 it first.

18 Q What was your reaction when you
19 first saw this document?

20 A My reaction, okay.

21 So I was notified that there
22 could be a deposition to resolve the
23 discrepancies, if -- according to what he
24 perceived to be a discrepancy.

25 Q So you didn't see this document

1 PATRICK MAIO

2 before you knew about the deposition, is that
3 right?

4 A I don't -- I don't know, I don't
5 know which came first, you know. I really
6 don't.

7 Q They were approximately the same
8 time?

9 A Yeah.

10 Q All right. So we are just going
11 to go through a couple of the statements in
12 here and talk about them.

13 So, I think we will start on
14 paragraph 4, which says, "At no time during my
15 work at FCA was I involved with the testing of
16 FCA diesel engine vehicles."

17 Did I read that correctly?

18 A Yes.

19 Q Do you agree -- does that line
20 up with what Mr. Crabb told you?

21 A Yes.

22 Q So you agree that he was not
23 involved with the testing of FCA diesel engine
24 vehicles?

25 A Yes.

1 PATRICK MAIO

2 Q To your knowledge?

3 So paragraph 5, Mr. Crabb says,
4 "At no time during my work at FCA was I
5 involved with testing related to nitrogen oxide
6 or NOx emissions from FCA vehicles."

7 Did I read that correctly?

8 A Yes.

9 Q Do you agree with that
10 statement?

11 A Yes.

12 Q So, in paragraph 6 it says, "In
13 2016 I received a telephone call from a man
14 identifying himself as a 'counselor.'

15 "I spoke to him for a few
16 minutes and expressly told him that while
17 staffed at FCA I did not work on anything
18 related to diesel engine vehicles or NOx
19 emissions."

20 Did I read that correctly?

21 A Yes.

22 Q So, aside from the 2016 part, do
23 you agree with that statement?

24 A No.

25 Q Which parts do you disagree

1 PATRICK MAIO

2 with?

3 A I did not identify myself as a
4 counselor, I always identified myself as a
5 researcher, always.

6 Q Do you remember specifically
7 identifying yourself as a researcher?

8 A Yes.

9 Q Are you a counselor in any sense
10 of the word?

11 A No.

12 Q During your conversation did
13 Mr. Crabb expressly tell you that while staffed
14 at FCA he did not work on anything related to
15 diesel engine vehicles or NOx emissions?

16 A Yes.

17 Q Did you specifically discuss NOx
18 emissions during your conversation?

19 A No, we only talked about
20 emissions, so that kind of jumped out at me as
21 well.

22 Q So, do you agree that he stated
23 that he did not work on NOx emissions?

24 A Could you repeat that question,
25 please?

1 PATRICK MAIO

2 Q Do you agree that Mr. Crabb
3 expressly told that you Mr. Crabb did not work
4 on NOx emissions?

5 A Yes, he did not work on NOx
6 emissions, that I know of.

7 Q So, skipping ahead to paragraph
8 8, it states, "Paragraph 451 of the Complaint
9 states that, I 'had knowledge of diesel as well
10 as gasoline engine testing.'

11 "This is not correct. At no
12 time during my work at FCA was I involved with
13 testing diesel engine vehicles.

14 "I did not tell the 'counselor'
15 that I had knowledge of diesel engine vehicle
16 testing."

17 Did I read that correctly?

18 A Yes.

19 Q Do you agree with that
20 statement?

21 A "At no time during my work at
22 FCA was I involved with testing diesel engine
23 vehicles," that is true, he did tell me that.

24 "I did not tell the
25 'counselor'," which is a misidentification. I

1 PATRICK MAIO

2 always identify myself as a researcher when I
3 do my interviews.

4 "I did not tell the 'counselor'
5 that I had knowledge of diesel engine vehicle
6 testing."

7 What he told me was that he had
8 a general working knowledge of diesel testing.

9 Q Did he say he had a general
10 working knowledge of diesel engine testing of
11 FCA vehicles?

12 A He had a general working
13 knowledge of diesel engine testing. That's the
14 blanket statement.

15 Q What kind of testing was he
16 referring to in that?

17 A I don't know. Beyond that, I
18 can't go beyond that, because I don't know.

19 Q In the context of your
20 conversation, could he have been referring to
21 NOx emissions testing?

22 A I can't --

23 MS. FUKS: Objection, calls for
24 speculation.

25 Q In the context of your

1 PATRICK MAIO

2 conversation, was it your understanding that he
3 was referring to NOx emissions testing at any
4 point?

5 A No, I don't know.

6 Q Did you explore the basis for
7 his general working knowledge of diesel engine
8 vehicle testing?

9 A Generally, yes.

10 Q Aside from discussions with
11 colleagues, did he provide you with any other
12 basis for that general working knowledge?

13 A Other than colleagues that he
14 may have known? I mean, he did get into a few
15 areas, yes.

16 Q What areas did he get into?

17 A Well, again, we didn't get too
18 deeply, because he doesn't work in that area,
19 but what he discussed was that diesel engines
20 generally are much hotter than gasoline fired
21 engines.

22 Q Okay. Do you agree with the
23 first -- excuse me, we answered that.

24 Moving on to paragraph 9, it
25 states, "The allegations contained in

1 PATRICK MAIO

2 paragraphs 453 and 461 of the Complaint, which
3 describe how 'you have to make sure that the
4 data is accurate and can be replicated in EPA
5 tests, and the data gathered from those engine
6 tests would be analyzed in a report suggest (in
7 the context of the Complaint) that I had
8 knowledge of NOx emissions testing and that the
9 'data' referred to in paragraphs 453 and 461
10 concerned NOx or NOx emissions testing."

11 We will stop there, because
12 that's a long paragraph.

13 A Yes.

14 Q First of all, did I read that
15 correctly?

16 A Yes.

17 Q Did Mr. Crabb indicate to you
18 that any of the data in the reports that he
19 described to you had to do with NOx emissions
20 testing?

21 A No.

22 Q So, the next sentence here
23 states, "That is incorrect and does not
24 accurately reflect my statements to the
25 'counselor.'".

1 PATRICK MAIO

2 "The statements I made to the
3 'counselor' that are referred to in this
4 paragraph were about fuel economy, not NOx
5 emissions or NOx emissions testing."

6 Did I read that correctly?

7 A Yes.

8 Q Aside from the references to
9 counselor, which we have established --

10 A Right.

11 Q -- are incorrect, do you agree
12 with the rest of that statement?

13 A No, because we didn't talk about
14 NOx, so -- you know what I mean?

15 Q Do you agree with the statement
16 that, the statements that Mr. Crabb made to you
17 were about fuel economy?

18 A Yeah; on the gasoline side.

19 Q So specifically the statements
20 were about fuel economy on the gasoline side?

21 A Yeah, and then, when he was --
22 with his general working knowledge, you know,
23 whatever that means, he was discussing that.

24 He included not only fuel
25 economy, but also efficiencies as far as -- or

1 PATRICK MAIO

2 how to lower emissions, and we didn't get into
3 any specificity beyond that.

4 Q Did he talk about lowering
5 emissions separately from, as a separate
6 process from fuel economy?

7 A With his second job -- or second
8 job of responsibilities where he tested or was
9 involved in some sort of testing and analysis
10 on competitive cars, which were not diesel, as
11 I understand it, he did not talk -- he did not
12 distinguish any differences that -- he said
13 that both -- the reports that he prepared were
14 the same.

15 Q To clarify, when you say
16 competitive cars, you mean cars manufactured by
17 competitors, right?

18 A Yes, like I think the specific
19 models that or makers that were like, again,
20 off the top of my head, like Volvo, BMW, Lexus,
21 so forth, so forth. He said everything, you
22 name it, we did it.

23 Q And in all contexts when he was
24 talking about the vehicles he worked on and the
25 data he gathered, he was referring to gasoline

1 PATRICK MAIO

2 vehicles, not diesel, correct?

3 A That's right; correct.

4 Q So if we look back at this
5 admittedly somewhat long paragraph 9, the
6 beginning quotes from the Complaint that say
7 the data is accurate -- that the data being
8 accurate and data analyzed in a report,
9 anything referring to that would be referring
10 to gasoline vehicles, right?

11 A Presumably, yeah.

12 Q All right.

13 Moving on to paragraph 10 here,
14 which is another sort of long one, it starts,
15 "In addition, the allegations contained in
16 paragraph 461 of the Complaint which state that
17 a -- excuse me -- that, 'A report' would be
18 'presented to a senior manager' and 'then
19 forwarded up to Jeffrey P. Lux or Robert E.
20 Lee; who 'would then forward these reports to
21 Sergio Marchionne,' are also misleading and do
22 not accurately reflect my statements to the
23 'counselor'."

24 That's also in quotes.

25 So, first of all, did I read

1 PATRICK MAIO

2 that correctly?

3 A Yes.

4 Q More or less, at least.

5 We discussed a little bit
6 earlier that he talked about a senior manager,
7 right?

8 A Yes. I think the reference, the
9 context was his senior manager, the one that he
10 passed his documents to directly, whatever
11 those documents or reports.

12 Q And those documents or reports
13 that he was talking about passing to his senior
14 manager would have been about gasoline
15 vehicles, right?

16 A That's correct.

17 Q So, he used the phrase senior
18 manager, is that right?

19 A Yes.

20 Q But he didn't identify that
21 manager, right?

22 A Yes, or else I would have named
23 him.

24 Q Did you draft this language?

25 A Which language?

1 PATRICK MAIO

2 Q The language that's quoted here,
3 presented to a senior manager, forwarded up to
4 Jeffrey P. Lux or Robert E. Lee, any of the
5 quotes here?

6 A Well, some things are in quotes,
7 I don't know, is that from the Complaint or is
8 that from the memo? Do you know?

9 Q It's quoting from the Complaint,
10 I believe.

11 Did you draft language like this
12 in your memo is what I'm asking?

13 A Did I draft language like this
14 in my memo? It's from the Complaint. I don't
15 know. I don't know.

16 Q Have you reviewed the Complaint?

17 A The Complaint with the pertinent
18 sections, yes. I did not read the entire
19 lawsuit.

20 Q When was the first time you saw
21 the Complaint?

22 A I don't know, but I want to say
23 it was recent months, recent months.

24 Q Was it after February of 2017?

25 MS. FUKS: Objection, this goes

1 PATRICK MAIO

2 beyond the scope of the deposition.

3 MS. THOMPSON: So ask him when he
4 reviewed the Complaint?

5 MS. FUKS: Yes.

6 Q Are you going to answer the
7 question?

8 MS. FUKS: You can answer the
9 question if you remember, but I'm
10 objecting to further questions about --

11 A I don't remember.

12 Q Would you like me to repeat the
13 question?

14 A No, I know what the question
15 was, I just don't remember.

16 Are you talking about the entire
17 Complaint or -- let me ask you this, are we
18 talking about the entire Complaint, when did I
19 know about it, or the part where this may have
20 been derived from?

21 Q When did you first review the
22 Complaint in this action?

23 MS. FUKS: Objection, asked and
24 answered.

25 A I just don't know.

1 PATRICK MAIO

2 Q All right.

3 Returning to this paragraph
4 here, did Mr. Crabb ever tell you that he
5 personally forwarded anything to anybody other
6 than his senior manager?

7 A No.

8 Q Did he provide a basis for his
9 understanding of how the reports were forwarded
10 up, as you stated?

11 A Yes, because I asked him, who
12 touches the document after your senior manager,
13 whoever that is.

14 Q Did he say how he knew that
15 information?

16 A Probably because he worked
17 there, I mean, but I'm speculating at this
18 point.

19 The mere fact that he had a
20 document or a report and he's working with his
21 senior manager, I mean, I would think you would
22 want to know or have some sort of knowledge who
23 gets it next.

24 He did not provide that. There
25 are some layers missing between his senior

1 PATRICK MAIO

2 manager and ultimately Lux and Robert E. Lee.

3 I don't know who they are.

4 Q Did he tell you how he knew who
5 received the document?

6 MS. FUKS: Objection, asked and
7 answered. You can answer.

8 A Repeat the question.

9 Q Did he tell you how he knew who
10 received the document?

11 A Yeah, he told me verbally, I
12 mean, I'm taking his word for it, he said it
13 ultimately went to the two Senior VPs, Lux and
14 Robert E. Lee. And then beyond that, it would
15 go to Marchionne.

16 That's all I know.

17 Q So he didn't explain to you how
18 he knew that, he just said that that's what
19 happened, is that right?

20 A In a general way. He never gave
21 me any specificity as far as names. He would
22 not even tell me the name of his senior
23 manager.

24 Q All right. The paragraph here,
25 just to close this paragraph out, says, the

1 PATRICK MAIO

2 second to last sentence here says, "I had no
3 contact with Jeffrey P. Lux, Robert E. Lee or
4 Sergio Marchionne, and do not know if any
5 reports were forwarded to them.

6 "At all times during my work at
7 FCA there were at least four levels of
8 management between me and Mr. Marchionne."

9 Do you agree with that
10 statement?

11 A Do I agree with that?

12 Okay, it's true that he never
13 said he had -- he doesn't -- he said he didn't
14 have contact with Lux, Lee or Marchionne, he's
15 too down on the totem pole, and did not know if
16 any reports were forwarded to them.

17 I would dispute that, because
18 that's what he told -- what he told me, where
19 those reports ultimately go.

20 Because I asked him.

21 Q So, you just said he was too far
22 down on the totem pole. What do you mean by
23 that?

24 A Well, he was an engineer or
25 power train engineer initially, so.

1 PATRICK MAIO

2 Q So, is there a reason you were
3 asking someone who you view as too far down on
4 the totem pole about what Mr. Marchionne
5 reviewed?

6 MS. FUKS: Objection, calls for
7 his strategy and his mental ---his
8 mental impressions.

9 You can't ask him why he asked
10 something.

11 MS. THOMPSON: Is it your
12 position that asking him why he asked
13 something reveals counsel's mental
14 processes?

15 MS. FUKS: Yes, beyond the scope.

16 The scope of this deposition are
17 purported discrepancies between the
18 Complaint and Mr. Crabb's declaration, and
19 that's it.

20 MR. TOMAINO: That's not what the
21 order says. If that's your
22 understanding of what the scope of the
23 deposition is, you should read the order
24 again, respectfully.

25 It says that what's fair game in

1 PATRICK MAIO

2 this deposition are his communications
3 with Mr. Crabb.

4 MS. FUKS: Right, his
5 communications, but not his mental
6 processes in terms of where he is.

7 MR. TOMAINO: His mental --

8 MS. FUKS: One --

9 MR. TOMAINO: -- processes and
10 counsel's mental process are --

11 MS. FUKS: That's absolutely
12 wrong.

13 MR. TOMAINO: We disagree.

14 We are going to have to come back
15 anyway, because he's going to have to
16 produce the two documents that refreshed
17 his recollection in preparation for this
18 deposition, so we will hold that question
19 as well.

20 MS. FUKS: All right.

21 Q Were you ever asked to review
22 the accuracy of the Complaint in any way?

23 A Which part of the Complaint?

24 Q Any part of the Complaint.

25 MS. FUKS: Objection. I'm going

1 PATRICK MAIO

2 to caution you not to reveal any
3 communications you've had with counsel.

4 THE WITNESS: So I don't answer?

5 MS. FUKS: To the extent that the
6 answer reflects conversations you had
7 with counsel, then I would instruct you
8 not to answer.

9 Q Is there anything that you can
10 answer?

11 A No.

12 Q Were you asked to review the
13 specific portions of the Complaint that
14 referred to Mr. Crabb at any point?

15 MS. FUKS: Again, I'll make the
16 same objection, to the extent that his
17 answers would reveal conversations with
18 counsel, I instruct him not to answer.

19 Q Did you review the portions of
20 the Complaint that referred to Mr. Crabb before
21 March of 2017?

22 A No.

23 Q Once you submitted your
24 memorandum and notes to your boss, did you ever
25 go back to them to review them for accuracy?

1 PATRICK MAIO

2 A Yes.

3 Q When?

4 A That's a constant process.

5 But after I submit my
6 information to my boss, I want to make sure
7 it's accurate, and I don't allow anything to
8 even leave my e-mail until it's 100 percent
9 accurate, at least according to what I believe
10 it to be accurate.

11 Q How do you verify the accuracy
12 of the information?

13 A Well, the accuracy, as far as my
14 conversation with Crabb, like interview skills
15 101, basically if it's something that he's
16 articulated to me, I read it back -- I wouldn't
17 say I read it back to him.

18 I try to explain it back to him,
19 and he has the opportunity to say no, that's
20 not quite right, or this is right, or whatever.

21 That's how I get my accuracy
22 when I speak to someone verbally, like
23 Mr. Crabb.

24 Q Did you do that in the context
25 of that same conversation, or at a later date?

1 PATRICK MAIO

2 A I do it all the time, all my
3 interviews. Not all of them, but I say the
4 lion's share of them.

5 Q When you were confirming the
6 accuracy of your notes with respect to
7 Mr. Crabb, did you do that process during the
8 same conversation, or at a later date?

9 A Not at a later date, because
10 there would have been a phone record for that.

11 Q Do you remember having a later
12 conversation with him?

13 A No.

14 Q So, to be clear, you did not
15 review the allegations in the Complaint about
16 Mr. Crabb before the Complaint was filed, is
17 that right?

18 A The allegations in the Complaint
19 before Mr. Crabb was included in the Complaint
20 or --

21 Q No, did you -- to be clear, you
22 did not review the allegations in the Complaint
23 that have to do with Mr. Crabb before the
24 Complaint was filed?

25 A That's not my job.

1 PATRICK MAIO

2 Q So, to answer my question, the
3 answer is no, then, you did not review?

4 A I don't review that, no; that's
5 not my job.

6 Q Okay.

7 MS. THOMPSON: Let's take a
8 break.

9 THE VIDEOGRAPHER: We are now
10 going off the record. The time is
11 11:29.

12 (At this point in the proceedings
13 there was a recess, after which the
14 deposition continued as follows:)

15 THE VIDEOGRAPHER: We are now
16 going back on the record. The time is
17 11:47.

18 MS. FUKS: Counsel, before you
19 begin, Mr. Maio just had a clarification
20 with regard to his earlier testimony.

21 THE WITNESS: Yeah, while I made
22 note of the fact that Mr. Crabb worked
23 on the gasoline side of the business at
24 the Tech Center, I wanted to clarify
25 that.

1 PATRICK MAIO

2 What he told me also was that he
3 had working knowledge of the diesel side
4 of the business as well, and that some of
5 the processes that were followed on that
6 side are similar to what happens on the
7 gas side.

8 And that he understood, because of
9 his working knowledge of how things work,
10 that the passing up of reports on any type
11 of testing that might happen on the diesel
12 side were similar to those on the gas
13 side.

14 MR. TOMAINO: Did you review any
15 materials just now to recall that?

16 THE WITNESS: No.

17 MR. TOMAINO: How did you just
18 recall that during the break, through
19 discussions with counsel?

20 MS. FUKS: Objection, you cannot
21 ask him --

22 MR. TOMAINO: You can instruct
23 him not to answer. There is an ongoing
24 deposition.

25 So the question is did you recall

1 PATRICK MAIO

2 what you just stated after discussing the
3 matter with counsel during a break?

4 MS. FUKS: Objection. He cannot
5 discuss his discussions with counsel, he
6 can't.

7 MR. TOMAINO: Are you instructing
8 him not to answer?

9 MS. FUKS: I am instructing him
10 not to answer.

11 MR. TOMAINO: Okay, go to your
12 questions. Thank you.

13 Q Earlier we talked about the
14 conversation you had with Mr. Crabb.

15 Did you include everything that
16 you talked about with Mr. Crabb in that
17 discussion you had earlier?

18 A Which discussion are we talking
19 about?

20 Q Throughout the deposition, is
21 there anything else that you discussed with
22 Mr. Crabb that you haven't referred to yet?

23 A I don't think so, no, I mean,
24 it's pretty much it.

25 Q Did you tell Mr. Crabb that you

1 PATRICK MAIO

2 were working for the Plaintiffs in a securities
3 class action?

4 A I told Mr. Crabb that I am
5 working for On Point Investigations, which is
6 representing a law firm that's involved in
7 securities -- not securities, but working in a
8 lawsuit against the company; FCA, that is.

9 Q Did you describe in any more
10 detail what the case was about?

11 A No, because I didn't know.

12 Q Did you identify who the
13 Plaintiffs were in the lawsuit?

14 A No.

15 Q Did you caution Mr. Crabb not to
16 disclose privileged or confidential
17 information?

18 A He didn't disclose it, so if I
19 felt that there was a need to, I would have
20 mentioned it to him.

21 But he was a former employee.
22 So one of the questions also I ask is if,
23 whether or not he's represented by counsel in
24 any ongoing litigation.

25 Q Did you ask that question here?

1 PATRICK MAIO

2 A Yeah, yeah, it's a standard
3 question.

4 Q What did he say?

5 A No.

6 Although I don't know if that's
7 true or not, so I'm taking his word.

8 Q So, to answer my earlier
9 question, you did not actually caution
10 Mr. Crabb not to disclose any privileged or
11 confidential information, is that right?

12 A Not on the surface, no.

13 Q Did you inform Mr. Crabb that he
14 was under no obligation to respond to you?

15 A Yeah, I mean everyone has that
16 right. It's America.

17 Q Did you tell Mr. Crabb that he
18 had that right?

19 A Yes.

20 Q Did you tell Mr. Crabb that he
21 would be identified as a confidential witness
22 in a Complaint?

23 A No.

24 Q Did you know that that he could
25 be identified as a confidential witness in the

1 PATRICK MAIO

2 Complaint?

3 A Potentially, yes; but I didn't
4 know that at the time; so I don't know.

5 Q Did you tell Mr. Crabb that his
6 identity could be revealed during discovery in
7 the lawsuit?

8 A There is always that
9 possibility, yes.

10 Q Did you tell Mr. Crabb of that
11 possibility?

12 A I would say no.

13 Q Are you represented by counsel
14 today?

15 A What counsel?

16 Q Any counsel?

17 A No -- well, I don't know how you
18 define representation.

19 There are two lawyers sitting at
20 this table on this side that I guess would be
21 my counsel.

22 Q Is there an engagement letter
23 between you and counsel?

24 A Oh, no.

25 Q So you mentioned your boss' name

1 PATRICK MAIO

2 was Chris, right?

3 A Szechinski. Sorry.

4 Q Your guess is as good as mine as
5 to how to pronounce that.

6 Is he still working at On Point?

7 A He owns it.

8 Q Did you say he owns it?

9 A That's a good question. Yes, he
10 does; I've been led to believe that, yes.

11 Q Do you know if On Point has a
12 license to conduct private investigations?

13 A Chris told me so.

14 Q Do you personally have a license
15 as a private investigator?

16 A I do not.

17 Q Did you ask in what states On
18 Point has licenses?

19 A No.

20 Q Have you done any of your own
21 independent research into On Point's licensing?

22 A I explored at one point getting
23 my own license in the State of California, and
24 as I understand it, and again, don't hold me to
25 the facts on this, but what, as I understand

1 PATRICK MAIO

2 it, is I have to work underneath another person
3 or another entity like On Point in order to
4 have a sponsor, basically, in order to become
5 an investigator.

6 And then you have to earn or you
7 have to work so many hours, hundreds of hours,
8 maybe thousands, I don't know, because I never
9 went down that route.

10 But I have to work with somebody
11 else, I just can't do it on my own, and Chris
12 was clear to me on that.

13 Q Did Chris tell you in what
14 states On Point was licensed?

15 A No.

16 MS. THOMPSON: We have no further
17 questions at this time.

18 MS. FUKS: Give me a couple of
19 minutes. I am just going to have a few
20 questions.

21 MR. TOMAINO: I would like to
22 state for the record that your
23 communications if any at this next break
24 about your examination of a witness who
25 has just testified that he is not your

1 PATRICK MAIO

2 client are discoverable.

3 THE VIDEOGRAPHER: We are now
4 going off the record. The time is
5 11:54 --

6 MS. FUKS: I think that
7 mischaracterizes his testimony.

8 MR. TOMAINO: Let's be on the
9 record for this. We object to you
10 taking a break to rehearse the questions
11 you are about to ask.

12 THE VIDEOGRAPHER: We are now
13 going back on the record, the time is
14 11:54.

15 MR. TOMAINO: We object to your
16 taking a break to rehearse the questions
17 you are about to ask.

18 If you need to take a break to
19 collect your notes and formulate some
20 questions, that's great, but we object to
21 you speaking to the witness who's not your
22 client during the break.

23 MS. FUKS: He is our client.

24 MR. TOMAINO: Okay, go ahead. We
25 can talk about it later.

1 PATRICK MAIO

2 MS. FUKS: Okay, we can talk
3 about it later, that's fine. We are
4 taking a break.

5 MR. TOMAINO: I said you can take
6 a break.

7 Our position is that your
8 discussions with this witness about the
9 questions you are about to ask him are
10 discoverable. That's our position.

11 MS. FUKS: Okay.

12 THE VIDEOGRAPHER: We are now
13 going off the record. The time is
14 11:55.

15 (At this point in the proceedings
16 there was a recess, after which the
17 deposition continued as follows:)

18 THE VIDEOGRAPHER: We are now
19 going back on the record. The time is
20 12:03.

21 MS. FUKS: So, I just have a few
22 questions, and I want to mark an
23 exhibit, I guess this will be 3.

24 (The above described document was
25 marked Maio Exhibit 3 for identification

1 PATRICK MAIO

2 as of this date.)

3

4 EXAMINATION BY

5 MS. FUKS:

6

7 Q So Exhibit 3 is an excerpt, I'll
8 represent that it's an excerpt from the
9 Complaint.

10 Mr. Maio, can you take a look at
11 paragraph 451.

12 A Okay.

13 Q So paragraph 451 states that
14 "Confidential witness number 1, (CW1) worked at
15 Chrysler's Auburn Hills, Michigan Tech Center
16 during the class period evaluating vehicles for
17 fuel economy and scheduling emissions testing
18 and had knowledge of diesel as well as gasoline
19 testing."

20 Is it true that CW1 is
21 Mr. Crabb?

22 MS. THOMPSON: Objection, calls
23 for speculation.

24 Q Does that description of CW1
25 match the description of Alex Crabb?

1 PATRICK MAIO

2 A Yes.

3 Q Is what is in paragraph 451
4 consistent with your conversation with
5 Mr. Crabb?

6 A Yes.

7 Q Paragraph 462 -- 452, I'm sorry,
8 you're looking at, it says, "As part of the
9 testing, CW1 would work with a dynamometer,
10 dyno' for short, which were used to measure
11 force, torque or power on both diesel and
12 gasoline engines.

13 "In these tests, a vehicle's
14 tires spin, but the vehicle does not go
15 anywhere.

16 "For emissions testing the dynos
17 were used to provide simulated road loading of
18 either the engines or power train.

19 "Some dynos built into the floor
20 of the Tech Center could simulate a car driving
21 at 40 miles per hour, for instance."

22 "A hose placed in the car's
23 exhaust pipe collects emissions. The vehicle
24 is run at city or highway cycles to simulate
25 those driving conditions."

1 PATRICK MAIO

2 MS. THOMPSON: I think it says
3 "driving in those conditions."

4 Q "Driving in those conditions,"
5 excuse me.

6 Is what is here in paragraph 452
7 consistent with what Mr. Crabb told you during
8 your conversation?

9 A Yes.

10 MS. THOMPSON: I object to form.

11 Q Is there anything that
12 inaccurately characterizes what Mr. Crabb told
13 you?

14 A No.

15 Q And if you take a look at
16 paragraph 453, "According to CW1, these
17 critical tests are super important, because to
18 certify a car, to sell it, the EPA
19 (Environmental Protection Agency) has to say
20 yeah, we accept the fuel economy numbers.

21 "When we submit to the EPA that
22 the vehicle does 20 miles per gallon in the
23 city and 30 on the highway, it has to do that.

24 "If they call you out, you can
25 get in trouble, so you have to make sure that

1 PATRICK MAIO

2 the data is accurate and can be replicated in
3 EPA tests."

4 Is this consistent with what
5 Mr. Crabb told you in your conversation?

6 MS. THOMPSON: Objection.

7 A Yes.

8 Q Anything in here that is
9 inaccurate or inconsistent with what he told
10 you?

11 MS. THOMPSON: Objection.

12 A No.

13 Q And if you will turn to
14 paragraph 461, please.

15 461 says, "CW1 explained that
16 the data gathered from these engine tests would
17 be analyzed in a report and presented to a
18 senior manager.

19 "The report would then get
20 forwarded up to Jeffrey Lux or Robert Lee,
21 where decisions would be made along the way on
22 whether to make changes to hardware or
23 somewhere impacting emissions or fuel
24 efficiency.

25 "This process worked the same on

1 PATRICK MAIO

2 the gasoline side of the benchmarking business
3 as the diesel side.

4 "Lux and Lee would then forward
5 these reports to Marchionne, who would make
6 decisions on whether to incorporate hardware or
7 software changes in emissions or fuel
8 efficiency in Chrysler's vehicles."

9 Is what is contained in this
10 paragraph consistent with what Mr. Crabb told
11 you during your conversation with him?

12 MS. THOMPSON: Objection.

13 A Yes.

14 Q Is there anything in this
15 paragraph at all that does not accurately
16 reflect what Mr. Crabb told you?

17 MS. THOMPSON: Objection.

18 A No.

19 MS. FUKS: Okay, I have no
20 further questions.

21 MS. THOMPSON: Okay, we have a
22 few more questions.

23

24 CONTINUED EXAMINATION BY

25 MS. THOMPSON:

1 PATRICK MAIO

2

3 Q So, still referring you to this
4 document, going back to 451, do you know who
5 confidential witness number 1 is?

6 A Well, I've been notified that
7 it's Alex Crabb.

8 Q In the next paragraph, the
9 document discusses the use of dynos on both
10 diesel and gasoline engines.

11 Do you see that?

12 A Um-hum.

13 Q And it states that CW1 would
14 work with a dyno on both diesel and gasoline
15 engines.

16 Do you see where it says that?

17 A Um-hum.

18 Q Is it your testimony that CW1
19 worked on testing diesel engines?

20 A He worked with them, with a
21 dyno, I'm not sure -- he worked with, as
22 opposed to worked on.

23 Q Can you explain the distinction
24 that you are making?

25 A Well, working with is -- he

1 PATRICK MAIO

2 analyzed -- he analyzed the test data and --
3 for that, and also that working on would mean
4 that he actually ran it. I cannot say that.

5 Q Did he tell you that he worked
6 with a dyno on diesel engines?

7 A On diesel engines, no.
8 He had a general working
9 knowledge of the diesel side of the business,
10 though.

11 Q But he never told you that he
12 work with a dyno on diesel engines, did he?

13 A That's correct.

14 Q Now, in paragraph 453, if you
15 could turn to that, this paragraph contains a
16 quote from CW1, right?

17 A Yes.

18 Q Was this quote in your notes?

19 A Yes.

20 Q Is this exact quote in your
21 notes?

22 A Yes. I mean, I write these
23 memos 24 hours to -- very soon after I do the
24 interviews, you know, so they are not --
25 everything is fresh in my mind.

1 PATRICK MAIO

2 I do not write these things a
3 year and a half later, for instance.

4 Q So this quote was in your memo,
5 is that right?

6 A Yes.

7 Q And in this quote it says,
8 "These critical tests," without any context
9 within the quote as to which tests there are,
10 right?

11 A Yes.

12 Q In the context of your
13 conversation, these critical tests would have
14 been referring to fuel economy tests, right?

15 A That is correct.

16 Q And to be specific, these
17 critical tests would have been referring to
18 fuel economy tests on gasoline engines, right?

19 A Yes.

20 MS. THOMPSON: All right, we have
21 nothing further, then, except to note
22 for the record that we do consider this
23 deposition open based on the refusal to
24 produce the memorandum and notes that
25 the witness reviewed.

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1 PATRICK MAIO

2 THE VIDEOGRAPHER: This concludes
3 the deposition of Mr. Maio. The time is
4 12:12.

5 We are now off the record.

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PATRICK MAIO - 08/22/2018

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1 PATRICK MAIO

2

3 I, the undersigned, a Certified
4 Shorthand Reporter of the State of New
5 York, do hereby certify:

6 That the foregoing proceedings were
7 taken before me at the time and place
8 herein set forth; that any witnesses in
9 the foregoing proceedings, prior to
10 testifying, were duly sworn; that a record
11 of the proceedings was made by me using
12 machine shorthand which was thereafter
transcribed under my direction;

13 That the foregoing transcript is a
14 true record of the testimony given.

15 Further, that if the foregoing
16 pertains to the original transcript of a
17 deposition in a federal case before
18 completion of the proceedings, review of
19 the transcript [] was [x] was not
20 requested.

21

22 I further certify I am neither
23 financially interested in the action nor a
24 relative or employee of any attorney or
25 party to this action.

IN WITNESS WHEREOF, I have this
date subscribed my name.

16 Dated: August 23rd 2018

17

18

19

20

Stephen J. Moore
RPR, CRR

21

22

23

24

25

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1 PATRICK MAIO

2 DECLARATION UNDER PENALTY OF PERJURY

3 Case Name: KOOPMAN v. FIAT

4 Date of Deposition: August 22,
5 2018

6

7 I, PATRICK MAIO, hereby certify

8 Under penalty of perjury under the
9 laws of the State of New York that the
10 foregoing is true and correct.

11 Executed this _____ day of
12 _____, 2018, at
13 _____.

14

15

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18 PATRICK MAIO

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1 PATRICK MAIO

2 DEPOSITION ERRATA SHEET

3 Case Name: KOOPMAN v. FIAT

4 Name of Witness: PATRICK MAIO

5 Date of Deposition: August 22,

6 2018

7 Reason Codes: 1. To clarify the
8 record.

9 2. To conform to the facts.

10 3. To correct transcription errors.

11 Page _____ Line _____ Reason _____
12 From _____ to _____13 Page _____ Line _____ Reason _____
14 From _____ to _____15 Page _____ Line _____ Reason _____
16 From _____ to _____17 Page _____ Line _____ Reason _____
18 From _____ to _____19 Page _____ Line _____ Reason _____
20 From _____ to _____21 Page _____ Line _____ Reason _____
22 From _____ to _____23 Page _____ Line _____ Reason _____
24 From _____ to _____25 Page _____ Line _____ Reason _____
From _____ to _____Page _____ Line _____ Reason _____
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25 DEPOSITION ERRATA SHEET

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10 Page _____ Line _____ Reason _____

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11 Page _____ Line _____ Reason _____

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12 Page _____ Line _____ Reason _____

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14 Page _____ Line _____ Reason _____

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15 Page _____ Line _____ Reason _____

From _____ to _____

16 _____ Subject to the above

17 changes, I certify that the transcript is

18 true and correct

19 _____ No changes have been

20 made. I certify that the transcript is

21 true and correct.

22

23




24

PATRICK MAIO

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